IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rue 32(2) (b)]
Description of case

Appeal From Order No. 34-A of 2001 **Decided on: April 19, 2006**
(Old No. 1445 of 2000)

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 19.04.2006

(Initial of Judges)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 34-A of 2001
(Old No. 1445 of 2000)

1. Vikram Singh
   S/o late Nandan Singh
2. Parwati Devi
   W/o late Nandan Singh
3. Km. Laxmi
   D/o late Nandan Singh
   (minor daughter through natural
   guardian mother Smt. Parwati Devi)
   All R/o Village Bawai,
   Patwari Circle- Saterkhal,
   Tehsil Rudraprayag, Distt. Rudraprayag.

…….Claimants-Appellants

Versus

1. Manvendra Singh S/o Sri Shivraj Singh
   Owner Jeep No. U.P. 07 J / 0833,
   R/o Village Dadua, P.O. Saurh via
   Bhalegaon, District Tehri Garhwal.
2. Harish Singh S/o Sri Ram Singh
   Driver Jeep No. U.P. 07 J / 0833,
   R/o Village Gurchholi, P.O. Dang Chaura,
   Tehsil Dev Prayag, District Tehri Garhwal.
   C/o owner, Sri Manvendra Singh
   S/o Shivraj Singh.
3. The Oriental Insurance Company
   Astley Hall, Dehradun,
   Through its Branch Manager.

…… Respondents

Mr. Panjak Purohit, Advocate for the appellants.
Mr. Deepak Rawat, Advocate for respondent No. 3.

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dt: 19th April, 2006.

Hon'ble Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 173 of the Motor Vehicles Act, 1988, by the claimants, is directed

against the judgment and award dated 08.09.2000 in Motor Accident Claim Case No. 41 of 1999, passed by learned M.A.C.T. / District Judge, Chamoli, whereby a sum of Rs. 59,500/- has been awarded as amount compensation to the claimants.

2) Brief facts of the case are that on 05.07.1999, Nandan Singh (deceased) was travelling in jeep bearing registration No. U.P. 07 J / 0833 on his way from Pauri Garhwal to Chamoli. It is alleged in the claim petition, that due to rash and negligent driving on the part of the driver of the jeep, at about 2:00 P.M., an accident took place in which Nandan Singh died. At the time of his death Nandan Singh was working as peon in the office of District Audit Officer, Co-operative Societies, Chamoli, and his salary was Rs. 4,480/- per month. Claimants – appellant Parwati Devi is the widow of the deceased, and claimants Vikram Singh and Laxmi are his children. After the death of Nandan Singh, aforesaid claimants filed a claim petition before the Motor Accident Claims Tribunal, Chamoli, claiming Rs. 10,00,000/- as amount of compensation.

3) The driver of the vehicle in question, Harish Singh, while contesting the claim petition has admitted the accident but pleaded that he was neither rash nor negligent in driving the vehicle. It is alleged by him that on a bend of the hilly road, a cow suddenly came in front of the vehicle, which caused the accident. The owner of the vehicle in question, Manvendra Singh, respondent, in his written statement also pleaded that the driver was not at fault. It is further pleaded by the owner that the vehicle was insured, at the time of the accident, with the Oriental Insurance

Company. The Oriental Insurance Company contested the claim and pleaded that the deceased was not a valid passenger nor the vehicle was being plied, at the time of the accident, with proper documents.

4) The Motor Accident Claims Tribunal framed following issues in the matter:

1. *Whether, Nandan Singh died in an accident on 05.07.1999 on Pauri – Sri Nagar road while travelling in vehicle registration No. U.P. 07 J/ 0388 and was the vehicle being driven rashly and negligently by its driver as alleged in the claim petition?*
2. *Whether, the vehicle was insured with the Oriental Insurance Company and was the driver driving the vehicle with valid driving license, registration certificate and the permit?*
3. *To what amount of compensation, if any, the claimants are entitled and from whom?*
4. *Whether, the accident has taken place in the manner alleged in para 2 of the written statement of respondent No. 2?*

5) After recording the evidence and hearing the parties, the Tribunal found that the vehicle was insured with the Oriental Insurance Company. It further fond that the vehicle was being driven with all the valid papers including registration certificate, fitness certificate, driving license etc. Issue No. 1 was decided by the Tribunal with the finding that Nandan Singh did die in the accident on 05.07.1999 while travelling in jeep bearing registration No. U.P. 07 J / 0833 on his way from Pauri to Sri Nagar, but it

found that the driver was not at fault as he was not rash and negligent in driving the vehicle. For that reason, the Tribunal awarded a compensation of Rs. 50,000/- only as a no fault liability. A further sum of Rs. 5,000/- was awarded on account of loss of consortium to the claimants and Rs. 2,500/- was also awarded on account on loss of estate.

6) We heard learned counsel for the parties and perused the records.

7) Learned counsel for the appellants argued that the learned Tribunal has erred in law in holding that the driver of the vehicle was not at fault. We have closely examined the evidence recorded by the Tribunal. P.W. 2, Girdhar Gopal is the eyewitness of the accident who was travelling with the deceased in the jeep bearing registration No. U.P. 07 J / 0833. This witness has stated on oath that vehicle was being driven at a high speed and while negotiating a bend, the driver of the vehicle lost control over the vehicle and as a result it fell into a deep gorge. This witness has further stated that Nandan Singh died in said accident and he himself received injuries. In our opinion, the Tribunal has erred in disbelieving the eyewitness account given by the P.W. 2, Girdhar Gopal. On behalf of the respondents, D.W. 1, Manvendra Singh, owner of the vehicle, was examined. This witness in not an eyewitness of the said accident. D.W. 2, Harish Singh, the driver of the vehicle, has stated that when he was driving the vehicle between Pauri to Sri Nagar, near Ufalta at one bend of the road, suddenly a cow came in front of the vehicle, due to which the accident took place. He has denied having driven the vehicle rashly and negligently. If the statement of this

witness is accepted that he was driving the vehicle slowly, as soon as the cow came on the road, the driver should have been able to apply the brakes and stop the vehicle on the road. The fact remains unanswered from his statement that if the vehicle was being driven slowly, how it fell in deep gorge.

8) Learned Tribunal has observed in the impugned judgment and award that the roads on the hills are not as wide as that in the plains, as such, it is natural that if suddenly some cow comes on the way, it is difficult to control the vehicle. We are unable to accept the reasoning given by the learned Tribunal, for the reason that the vehicle is not supposed to be driven at the same speed with which it is driven on open roads in the plains. In the circumstances, we are of the view that the statement of P.W. 2, Girdhar Gopal is a natural statement and cannot be disbelieved for the reasons mentioned by the Tribunal.

9) As to the amount of compensation, P.W. 1, Vikram Singh, claimant has stated on oath that the deceased Nandan Singh was employed in the office of District Audit Officer, Co-operative Societies, Chamoli, at the time of his death. This witness is son of the deceased. He has stated that apart from himself, his widowed mother Parwati Devi and sister Laxmi are left behind by the deceased. P.W. 1, Vikram Singh has further stated that his father (deceased) used to spend Rs. 3,000/- per month on maintenance of his family, out of the salary he used to get from the office. Paper No. 7-C (Ext. 1) is the statement of salary of the deceased, which shows that the deceased was earning Rs. 4,480/- per month. A copy of the extract of the family

register [paper No. 8-C (Ext. 2)] shows that Parwati Devi is the widow of the deceased Nandan Singh, Vikram Singh is the son of the deceased Laxmi is the daughter of the deceased. A copy of the postmortem report (paper No. 11-C), of which formal proof has been dispensed with by the respondent, shows that caused of death of Nandan Singh, aged 45 years, was due to ante mortem injuries received over the head. The ante mortem injuries recorded in the postmortem shows that there was one lacerated wound and six abrasions on the head of the deceased. The copy of the extract of the general dairy [paper No. 9-C (Ext. 4)] also corroborates that fact that Nandan Singh died in the accident on 05.07.1999 at about 2:20 P.M., when he was travelling in jeep registration No. U.P. 07 J / 0833, which fell into a gorge on said date. With the above evidence on record, the Tribunal has erred in law in not awarding the actual pecuniary loss suffered by the claimants.

10) From the evidence on record, as discussed above, it is clear that the salary of Nandan Singh at the time of accident was Rs. 4,480/- per month. Out of said sum the deceased would have spent 1/3 of that amount (i.e. Rs. 4480 / 3 = Rs. 1,493/-) on himself as personal expenses. That being so, the pecuniary loss suffered by the claimants comes to Rs. 4,480 – Rs. 1,493 = Rs. 2,987/-. Therefore, the annual loss to the claimants is Rs. 2,987 x 12 = Rs. 35,844/-. Since, P.W. 1. Vikram Singh, son of the deceased, in his statement has admitted that he has got government job on compassionate ground in place of his father and his sister Laxmi (claimant) has also got married, in these circumstances, a multiplier of 7 would meet the ends of justice, in the present case. As such, the total amount of

compensation on account of dependency would be Rs. 2,50,908/-. If Rs. 5,000/- on account of loss of consortium and Rs. 2,500/- on account of loss of estate is added to it, the total amount of compensation to which the claimants are entitled comes to Rs. 2,58,408/-. It is not disputed that the vehicle was insured, at the time of accident, with respondent Oriental Insurance Company, who is liable to pay the amount of compensation to the claimants. It is pertinent to mention here, that the vehicle was found plying with all valid documents, including the driving license.

11) For the reasons as discussed above, the appeal deserves to be allowed. The same is allowed. The impugned judgment and award dated 08.09.2000, passed in Motor Accident Claim Case No. 41 of 1999, is set aside. The claim petition is allowed for an amount of compensation to the tune of Rs. 2,58,408/- (instead of Rs. 59,500/-) with 6% interest per annum thereon as against the respondent Oriental Insurance Company. If the said amount with interest is not paid to the claimants or deposited before the Motor Accident Claims Tribunal concerned, within a period of one month, from today, the respondent Oriental Insurance Company shall be liable to pay 9% interest per annum on the amount of compensation awarded as above. The amount of Rs. 59,500/- and interest thereon deposited under the impugned award shall be adjusted from the awarded sum as above. No order as to costs.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. 19th April, 2006.
H.Negi